



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

EMMANUEL TERRELL,  
Plaintiff,

vs.

UNITED STATES OF AMERICA et al.,  
Defendants.

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CIVIL ACTION NO. 4:08-2228-HFF-TER

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ORDER

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This is a *Bivens* and Federal Tort Claims Act action. Plaintiff originally filed his Complaint as a habeas petition under 28 U.S.C. § 2241, but later amended it to remove any habeas claims. Plaintiff is proceeding pro se.

The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that Plaintiff's Motion for Default Judgment (Document # 45) be denied, Defendants' Motion to Dismiss and for Summary Judgment (Document # 40) be granted, this case be dismissed in its entirety, and all remaining motions be rendered moot. The Report was made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may

accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on August 12, 2009, and the Clerk of Court entered Plaintiff's objections to the Report on August 26, 2009. The Court has reviewed the objections, but finds them to be without merit. Therefore, the Court will enter judgment accordingly.

After a thorough review of the Report and the record in this case pursuant to the standard set forth above, the Court overrules Plaintiff's objections, adopts the Report and incorporates it herein. Therefore, it is the judgment of this Court that Plaintiff's Motion for Default Judgment (Document # 45) is **DENIED**, Defendants' Motion to Dismiss and for Summary Judgment (Document # 40) is **GRANTED**, and this case is **DISMISSED** in its entirety. Consequently, all remaining motions are rendered **MOOT**.

**IT IS SO ORDERED.**

Signed this 27th day of August, 2009, in Spartanburg, South Carolina.

s/ Henry F. Floyd  
HENRY F. FLOYD  
UNITED STATES DISTRICT JUDGE

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#### **NOTICE OF RIGHT TO APPEAL**

The parties are hereby notified of the right to appeal this Order within sixty (60) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.